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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

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## Decision

**Matter of:** Northrop Grumman Information Technology, Inc.

**File:** B-401198; B-401198.2

**Date:** June 2, 2009

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William W. Thompson, Jr., Esq., Michael A. Branca, Esq., and Lori Ann Lange, Esq., Peckar & Abramson, PC, and Linda T. Maramba, Esq., Northrup Grumman Information Technology, Inc., for the protester.  
Scott M. McCaleb, Esq., John R. Prairie, Esq., and Heidi L. Bourgeios, Esq., Wiley Rein LLP, for CGI Federal, Inc., an intervenor.  
Christine Simpson, Esq., Department of Health & Human Services, for the agency.  
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably found that awardee's proposal complied with solicitation provision calling for nearby performance facility, even though it proposed to have only management personnel at that facility, where solicitation only required management—not all—personnel to be located at nearby facility.

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### DECISION

Northrup Grumman Information Technology, Inc. (NGIT), of McLean, Virginia, protests the issuance of a task order to CGI Federal, Inc., of Fairfax, Virginia, under request for proposals (RFP) No. 8023, issued by the Department of Health & Human Services, Centers for Medicare & Medicaid Services (CMS), for Medicare Advantage and Part D (MAPD) maintenance. Competition was restricted to prior awardees under contract No. HHSM-500-2007-00141, a multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract. NGIT asserts that the agency improperly evaluated the proposals.

We deny the protest.

The RFP sought proposals for information technology systems maintenance services, including enhancements, software changes, fixes, data cleanups, and special projects, in support of three MAPD subsystems—Medicare Advantage Prescription System (MARx), Premium Withhold System (PWS), and Medicare Beneficiary Database (MBD). The three systems currently are maintained by three

different contractors, including NGIT, which maintains the MBD subsystem. The RFP contemplated issuance of a cost-plus-award-fee task order under the successful offeror's ID/IQ contract for a 1-year base period, with 4 option years. Proposals were to be evaluated for "best value" on the basis of cost and three non-cost factors (listed in descending order of importance)--technical approach, staffing, and past performance. Cost was considered approximately equal in weight to the non-cost factors.

Three offerors, including NGIT and CGI, submitted technical proposals and rough cost estimates. After oral presentations from each offeror, a technical evaluation panel (TEP) evaluated the proposals. Following discussions, the offerors submitted more detailed technical and cost proposals, which were evaluated by the TEP. The agency conducted additional discussions and obtained final proposal revisions (FPR). After reviewing the FPRs, the TEP concluded that NGIT's and CGI's proposals, with very good ratings overall, were essentially technically equal. Based on CGI's proposed cost--\$135,961,120--approximately \$12 million lower than NGIT's, the contracting officer determined that CGI's proposal represented the best value and issued it the task order. After a debriefing, NGIT filed this protest.

#### FACILITY LOCATION

The RFP's statement of work established the following requirement:

The contractor shall have a facility within 15 miles of CMS for the duration of this contract. The contractor's Project Management staff shall be located at this facility. The facility must accommodate contractor staff working on this contract and provide for meeting space.

RFP § C.1.2. NGIT asserts that CGI's proposal did not comply with this provision because CGI proposed to perform the majority of its work at a facility more than 15 miles away from CMS headquarters, in Woodlawn, Maryland. The agency responds that its evaluation was reasonable because this provision required only that project management staff--not all staff--perform at the nearby facility, and CGI met this requirement.

To be reasonable, the interpretation of solicitation language must be consistent with the solicitation when read as a whole and in a manner that gives effect to all of its provisions. BellSouth Telecomm., Inc., B-258321, Jan. 6, 1995, 95-1 CPD ¶ 10 at 6. NGIT's assertions here simply are not reasonable. Reading the quoted provision as a whole, while it is plain that offerors were required to have a facility within 15 miles of CMS headquarters, it is just as plain, contrary to NGIT's interpretation, that the provision does not require all staff to be located there; rather, only project management staff is specified. The remainder of the provision only generally calls for accommodation of staff working on the contract and provision of meeting space;

it does not require that all other contractor personnel be located at the facility. To read the provision otherwise would make the requirement specifying the location of project management personnel redundant and the provision, at best, patently ambiguous; the protester was obligated to challenge any such ambiguity prior to submitting its proposal. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2009); see, e.g., Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3. We conclude that there was no basis for the agency to reject or downgrade CGI's proposal for proposing to locate non-project management staff more than 15 miles from CMS.<sup>1</sup>

Our conclusion is not changed by NGIT's reliance on the RFP's requirement that the contractor "interact" with CMS personnel (RFP § C.2) and to work "closely" with CMS personnel on numerous tasks listed in RFP section C.3. These provisions do not require that the interaction or work occur at a facility within 15 miles of CMS. Likewise, NGIT's assertion that, under its incumbent contract for a portion of this requirement, members of its technical staff were "routinely" called upon to attend impromptu face-to-face meetings (Response to Motion to Dismiss at 3) is not a basis for finding that the RFP here required offerors to propose to locate all staff at the nearby facility. Each federal procurement stands on its own; prior practice involving meetings at a nearby facility does not establish the same requirement here. See Sabreliner Corp., B-275163 et al., Dec. 31, 1996, 96-2 CPD ¶ 244 at 2 n.2. In fact, the provision calls for the facility to include meeting space, but does not mandate that all staff work be performed at the site.

#### TRANSITION COST

The statement of work detailed a 7-month transition period from the existing MBD contractor to any new awardee. RFP § C.3.11. The incumbent contractor would remain responsible for the work, with the new contractor "shadowing" its activities, during the first half of the period, and the roles would be reversed during the second half of the period. Id. NGIT, the MBD incumbent, initially did not propose any costs

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<sup>1</sup> As an alternative argument, raised for the first time after receipt of the agency report, NGIT asserts that the agency improperly failed to evaluate its proposal as superior to CGI's based on NGIT's proposal to locate its facility and all its personnel closer than 15 miles to CMS, while CGI did not. Supplemental Protest at 2-3. This argument is untimely. Protests must be filed within 10 days after the protester knew or should have known the basis of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2). NGIT knew at the time of its initial protest that CGI planned to locate non-management personnel at a facility more than 15 miles from CMS, and that the agency had not assigned NGIT's proposal any strength for its facility's closer location. Because NGIT did not raise this issue until after receipt of the agency report, well over 10 days later, this aspect of its protest is untimely and will not be considered.

for performing the maintenance work during the transition, planning instead to perform and charge for the work under its incumbent contract during that period. In discussions, the agency three times asked NGIT to propose the full cost of performing MBD work during the transition period, and NGIT ultimately complied in a revised proposal. The evaluation also assigned the following strength to NGIT's technical proposal: "No transition will be needed for the MBDSS Maintenance option because [NGIT] is the current maintainer, resulting in no learning curve and cost saving due to no transition being required for MBDSS." Agency Report, Tab 8, at 3.

Citing the evaluation reference to "cost saving due to no transition," NGIT asserts that the agency did not believe that the firm needed to propose any transition costs, and concludes that the agency improperly required it to propose transition costs, which artificially raised its proposed cost by at least [deleted].

We need not resolve this issue because the record shows that NGIT was not competitively prejudiced by any alleged evaluation error. In this regard, even if NGIT prevailed on this protest ground, its evaluated cost would remain significantly higher (more than [deleted]) than the awardee's. Since we have found no error in the technical evaluation, under which NGIT's and CGI's proposals both were rated very good, and the contracting officer as source selection authority determined that their proposals were essentially equal, there is no reasonable possibility that NGIT's higher-cost proposal would have been selected for award. See American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3. Prejudice is an essential element of every viable protest, and where, as here, none is shown or is otherwise evident, there would be no basis for sustaining the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel